In the

SUPREME COURT OF THE UNITED STATES

October Term 1977

No. 77-6540

HAROLD RAMSEY,

Petitioner,

-against-

THE STATE OF NEW YORK,

Respondent.

REPLY BRIEF FOR PETITIONER

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PRELIMINARY STATEMENT

This is a reply to the brief submitted by the District Attorney in opposition to the petition for a writ of certiorari in the above-captioned case.

ARGUMENT

BECAUSE HE MISCONSTRUES THE RECORD BELOW, THE DISTRICT ATTORNEY FAILS TO RECOGNIZE THE IMPORTANCE OF THE ISSUES RAISED IN THIS CASE TO THE ADMINISTRATION OF CRIMINAL JUSTICE.

The District Attorney claims to see no substantial federal question in the case at bar. He contends that the judge's participation in the plea bargaining process, although violative of Federal rules and A.B.A. standards, consisted of nothing more than an explanation of "the ranges of sentencing alternatives" offered to a "wily [plea] bargainer" who could hardly have been surprised to learn that he would receive the maximum sentence permitted by law were he to be convicted after trial. The record below unequivocally refutes this view.

The judge did not present the 12½ to 25 year term as one of several possible sentencing alternatives. He told counsel that:

> if this guy goes to trial and he is convicted, he is going to get twelve and a half to twenty-five.

The District Attorney suggests that the judge was merely informing the petitioner "of the reality of his situation - a reality which could not have been unknown to him." But it is difficult to see why the petitioner would have suspected that the imposition of the maximum sentence was the "reality of his situation" when he had twice before been offered, and rejected, a 3½ to 7 year term which would have been only slightly greater than the very minimum sentence he could have possibly received. (See, District Attorney's Brief at 3n.)

The District Attorney contends that "[i]n the final analysis, the question to be resolved is not so much whether the judge participated in the plea discussions but, rather, what was said and its probable effect." (Id at 11) Even by this test, the District Attorney's position must fail.

After a witness had testified at the Wade hearing, the judge extended an offer of from 6 to 12 years. As counsel later recalled:

> I came back and said to [the petitioner] six to twelve, and he said no,...

It was only after the petitioner had rejected this offer that the judge saw fit to warn him gratuitously that if he

continued to insist on a trial and were convicted, "he is going to get twelve and a half to twenty-five." The petitioner's immediate response was to accept the plea offer.

Plainly, then, what was said was an undisguised threat to impose a much harsher sentence after trial in order to induce a plea of guilty. Its effect was to persuade the petitioner to accept the very same offer he had flatly rejected only minutes before.

The record belies the District Attorney's suggestion that the petitioner "was motivated to plead guilty by his evaluation of the strength of the People's case relative to his defense, if any, and realized that his chances of acquittal were slight." (Id at 16.) The only event intervening between his rejection of the 6 to 12 year plea offer and his decision minutes later to accept it was the issuance of the trial judge's warning. Hence, the record supports the petitioner's strenuous assertions at sentencing that his plea had been the result of judicial coercion. And indeed, even counsel opined, "in light of everything, that that was the basis of why the [petitioner] took the plea."

The District Attorney's reliance on the plea allocution is equally unpersuasive. Standing alone, the plea minutes establish a valid predicate for the entry of conviction, and admittedly seem to indicate that the plea was being voluntarily offered. It has now been established, however, that the plea catechism had followed off-the-record exchanges which made a mockery of the petitioner's prefunctory agreement at the allocution that his plea had not been coerced.

The petitioner's remark to the Probation Department that, although innocent, he had pleaded guilty because he was "tired of jail" does not support the view that the plea was freely given. To a man who had been incarcerated for some eighteen months awaiting trial, and who was tired of jail, the prospect of the threatened 12½ to 25 year sentence would have been all the more coercive.

Finally, in view of the District Attorney's response, the petitioner should make clear that he does not seek to level a broad attack on the plea bargining process. He does not quarrel with the notion that a criminal defendant may voluntarity plead guilty, induced to do so by the hope that he will receive a lesser sentence than the one he might expect upon a conviction after trial.

He does maintain, however, that when a trial judge gratuitously intervenes in the plea bargaining process by threatening to impose after trial a significantly harsher sentence, in order to induce a guilty plea, serious due process questions arise. Those questions should be addressed by this Court.

The practice of plea bargaining pervades our criminal justice system.* Because this is so, the constitutional limits of judicial participation in the process must be defined. This case offers the Court a proper vehicle through which to set those limits. Therefore, certiorari should be granted.

* In New York City, during 1976, 89.7% of all dispositions of felony indictments were made prior to trial. In the remainder of New York State, in the same year, the figure was 93.4%. State of New York, Twenty-Second Annual Report of the Judicial Conference (1977), 52-55.

CONCLUSION

FOR ALL OF THE FOREGOING REASONS, THE WRIT OF CERTIORARI PRAYED FOR HEREIN SHOULD BE GRANTED.

Dated: Brooklyn, New York
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